

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Filip Woroniecki	Team: Squad #7	CCRB Case #: 201701370	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/15/2017 7:15 PM	Location of Incident: West 146th Street and Lenox Avenue	Precinct: 32	18 Mo. SOL 8/15/2018	EO SOL 8/15/2018	
Date/Time CV Reported Tue, 02/21/2017 1:56 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 02/21/2017 1:56 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Nanhao Chen	00000	944428	032 PCT
2. An officer			032 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM David Tobar	01989	961374	032 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Nanhao Chen	Abuse: Lieutenant Nanhao Chen stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.LT Nanhao Chen	Abuse: Lieutenant Nanhao Chen threatened to arrest § 87(2)(b)	
C.LT Nanhao Chen	Abuse: Lieutenant Nanhao Chen threatened to arrest § 87(2)(b)	
D.LT Nanhao Chen	Abuse: Lieutenant Nanhao Chen interfered with § 87(2)(b)'s use of a recording device.	
E.LT Nanhao Chen	Abuse: Lieutenant Nanhao Chen threatened to arrest § 87(2)(b)	
F. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	

Case Summary

On February 21, 2017, § 87(2)(b) filed this complaint with the CCRB via the online website on behalf of himself, his son, § 87(2)(b) his grandson, § 87(2)(b) and his son-in-law, § 87(2)(b)

On February 15, 2017, at approximately 7:15 p.m., § 87(2)(b) was operating a vehicle containing § 87(2)(b) and § 87(2)(b) in the vicinity of West 146th Street and Lenox Avenue, in Manhattan. Their vehicle was stopped by Lieutenant Nanhao Chen and PO David Tobar of the 32nd Precinct (**Allegation A**). Upon running § 87(2)(b)'s license, it was revealed that his license was suspended and he was arrested as a result. During the encounter, Lieutenant Chen allegedly threatened to arrest § 87(2)(b) and § 87(2)(b) (**Allegations B and C**). § 87(2)(b) attempted to video record the arrest of § 87(2)(b) on his cell phone, but Lieutenant Chen allegedly instructed him to stop and threatened him with arrest if he continued to record (**Allegation D and Allegation E**). Upon observing that additional officers were arriving in marked vehicles, unmarked vehicles, and a marked van, § 87(2)(b) asked the officers why they were bringing a “paddy wagon” to the incident. An unidentified officer allegedly responded that the vehicle was an “official police vehicle, not a paddy wagon,” and referred to § 87(2)(b) as “boy” (**Allegation F**). Aside from § 87(2)(b)'s arrest for § 87(2)(b), no other civilians were arrested or issued a summons.

This case surpassed the 90th day benchmark by approximately two months as a result of the hurdles associated with obtaining five sworn civilian testimonies and extensive efforts made to identify the subject officer in Allegation F.

Video footage capturing a portion of the incident was obtained by the investigation from § 87(2)(b). The Snag-it version of that video is embedded below, and in Board Review 21. A summary of the video can be located in Board Review 22.



2017-07-24_12-03-13.mp4

Mediation, Civil and Criminal Histories

- The civilian parties involved in this case originally agreed to mediate; however, due to officer identification issues, the case was investigated.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
(Board Review 01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED] (Board Review 02, 03 and 04).
- As of July 10, 2017, there was no Notice of Claim filed for this incident (Board Review 05).

Civilian and Officer CCRB Histories

- This is the first complaint involving § 87(2)(b) and § 87(2)(b) (Board Review 06, 07, 08 and 09).
- Lieutenant Chen has been a member of the service for ten years and has been the subject of six allegations stemming from four prior complaints. None of these allegations have been substantiated. Two cases listing Lieutenant Chen as a subject officer, 201310522 and 201409661, included allegations that he threatened to arrest civilians, though those cases were closed as “complainant uncooperative” and “unsubstantiated,” respectively (Board Review 10).

Findings and Recommendations

Explanation of Subject Officer Identification

- The stop allegation is being pleaded against Lieutenant Chen, who in his statement confirmed that it was his decision to pull over § 87(2)(b)'s vehicle based on the observed infraction and because he was the supervisor on scene.
- § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
- The subject officer of the offensive language allegation remains unidentified. § 87(2)(b) described him as a white male with dirty blonde hair, who was 6'1" to 6'2" tall, 180 to 190 pounds, and 25 to 30 years old. He wore an NYPD hat, was dressed in uniform and had an athletic body build. § 87(2)(b) and § 87(2)(b) could not describe the officer with whom § 87(2)(b) interacted.
- According to the ICAD prepared for this incident, the 32nd Precinct Lieutenant, identified via the investigation as Lieutenant Chen, responded to the location. The ICAD also listed Sector C2 and Sector C3 officers from the 32nd Precinct as having received the job, however, the document did not indicate whether they arrived at the scene (Board Review 23). The tour 3 roll call obtained from the 32nd Precinct listed PO Brian Bollettieri and PO Anthony Arena as being assigned to Sector C2, and there were no officers assigned to Sector C3 during that tour (Board Review 24). PO Bollattieri and PO Arena did not match the subject officer description provided by § 87(2)(b) and as per PO Arena's memo book, they were involved in an unrelated vehicle stop at the time of the incident (Board Review 25).
- The investigation also obtained photographs of all white males assigned to the 32nd Precinct who worked a sector patrol assignment during the time of the incident. They were PO Stephen Forsyth, PO Joseph Parella, PO Aleksey Berezovski, PO Jesse Pulice, PO Brian Hinton, PO Peter Montalbano, PO Michael Baker, PO Eric Stovall, PO Vincent Ciccolella and PO Scott Mischner, none of which matched the subject officer description. Additionally, PO Tobar and Lieutenant Chen were shown the tour 3 roll call for the day of the incident and were unable to identify any of the additional officers who responded to the location. PO Tobar and Lieutenant Chen were given the subject officer description provided by § 87(2)(b) however, they were unable to identify any officers from their command who marched the incident.
- The video footage recorded by § 87(2)(b) during the incident depicts a group of at least six officers standing in the street. However, due to the distance between the officers and the camera and the poor quality of the recording, the identities of said officers remain unknown.
- Due to the lack of documentation regarding this incident and the general description of the officer provided by § 87(2)(b) the investigation could not identify the subject officer of the offensive language allegation. § 87(2)(g)
[REDACTED]
[REDACTED]

Allegations not pleaded

- § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- **Force: Physical Force:** § 87(2)(b) alleged that § 87(2)(b) was thrown or pushed up against the van preceding his arrest, and otherwise forcibly handled by Lieutenant Chen who delivered a "hidden strike" to § 87(2)(b)'s shoulder in an effort to get him into the police vehicle. However,

§ 87(2)(b) did not make any force allegations on his own behalf. § 87(2)(g)

Allegation A: Abuse of Authority: Lieutenant Nanhao Chen stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that Lieutenant Chen stopped the vehicle containing § 87(2)(b) and § 87(2)(b) § 87(2)(g).

All interviewed civilians stated that at one point in the interaction, they were informed that § 87(2)(b)'s vehicle was pulled over due to nearly hitting a pedestrian. § 87(2)(b) and § 87(2)(b) who were in the vehicle at the time of the stop, explained that either Lieutenant Chen or PO Tobar informed them that the pedestrian was a female dressed in black. Additionally, § 87(2)(b) and § 87(2)(b) denied seeing any pedestrian in the path of § 87(2)(b)'s vehicle, which they communicated to either Lieutenant Chen or PO Tobar. Similarly, § 87(2)(b) and § 87(2)(b) who were walking on Lenox Avenue in the direction of 146th Street, did not observe § 87(2)(b) nearly hit a pedestrian as he drove past them (Board Review 11 through 15).

Lieutenant Chen and PO Tobar stated that while in the RMP, they observed § 87(2)(b) make a right turn without yielding to a pedestrian, whom PO Tobar described as an "older lady." Based on the observed infraction, Lieutenant Chen determined to pull over § 87(2)(b)'s vehicle and PO Tobar informed § 87(2)(b) that his vehicle was stopped because he "nearly hit a pedestrian" (Board Review 15 and 16).

Lieutenant Chen's and PO Tobar's memo books referenced the stop of § 87(2)(b)'s vehicle and stated that he failed to "yield to a pedestrian" (Board Review 26 and 27). Additionally, § 87(2)(b)'s arrest report, which was prepared by PO Tobar and approved by Lieutenant Chen, mentioned that § 87(2)(b) was seen "making a right turn onto Lenox Avenue when he failed to yield to a pedestrian," however, he was not formally charged with that infraction (Board Review 28).

§ 87(2)(g)

Allegation B: Abuse of Authority: Lieutenant Nanhao Chen threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that while § 87(2)(b) was in handcuffs and was standing next to Lieutenant Chen, § 87(2)(b) asked § 87(2)(b) to retrieve his briefcase from the backseat of the car. While § 87(2)(b) approached the vehicle and slightly opened the back driver door, Lieutenant Chen pushed § 87(2)(b) aside and shut the door before § 87(2)(b) could fully open it. Without issuing any prior instructions, Lieutenant Chen informed § 87(2)(b) that if he didn't back away, he'd be "in the same position" as § 87(2)(b) or that he would be "in handcuffs as well." § 87(2)(b) backed away immediately and returned to the sidewalk (Board Review 13).

In his initial phone statement, § 87(2)(b) explained that as § 87(2)(b) opened the back door of § 87(2)(b)'s vehicle to retrieve the briefcase, Lieutenant Chen slammed it and instructed § 87(2)(b) to "get away from the vehicle." However, he did not make any mention of Lieutenant Chen threatening to arrest § 87(2)(b). In his sworn statement, § 87(2)(b) stated that he asked § 87(2)(b) to get his briefcase from the backseat of the car but made no mention of the threat of arrest. Once asked about the allegation

directly, § 87(2)(b) stated that as § 87(2)(b) slightly opened the driver-side rear door, Lieutenant Chen shut the door and told him that if he did not step away from the vehicle, he could be arrested too. § 87(2)(b) did not remember the exact statement made by Lieutenant Chen but explained that it had to do with § 87(2)(b) being arrested if he did not walk away from the car (Board Review 20 and 11).

§ 87(2)(b) did not remember if § 87(2)(b) ever asked § 87(2)(b) to retrieve his briefcase from the backseat of the vehicle, however, he observed § 87(2)(b) attempt to get something out of the car. As § 87(2)(b) approached the vehicle, an officer, identified via the investigation as Lieutenant Chen, told § 87(2)(b) that he was not allowed to take anything out. § 87(2)(b) did not remember if Lieutenant Chen ever threatened to arrest § 87(2)(b) if he did not step away from the vehicle and did not remember any additional details pertaining to this interaction (Board Review 12).

§ 87(2)(b) and § 87(2)(b) did not observe § 87(2)(b) approach § 87(2)(b)'s vehicle at any point during the incident and did not see him attempt to retrieve a briefcase from the backseat of the car. They did not hear Lieutenant Chen tell § 87(2)(b) to step away from the vehicle and did not hear him make any threats of arrest while speaking to § 87(2)(b) (Board Review 14 and 15).

Lieutenant Chen did not remember § 87(2)(b) attempting to retrieve anything from § 87(2)(b)'s vehicle. He did not remember seeing § 87(2)(b) attempting to open the vehicle's doors and did not recall any conversation pertaining to a briefcase located on the backseat of the car. He did not remember if he shut the vehicle's door as § 87(2)(b) attempted to go inside of the vehicle and did not remember telling him to step away. Lieutenant Chen did not remember telling § 87(2)(b) that he could be arrested if he did not step away from the vehicle or that he could be "placed in handcuffs as well" and stated that he did not threaten to arrest § 87(2)(b) at any point during the incident (Board Review 16).

PO Tobar observed § 87(2)(b) approach § 87(2)(b)'s vehicle in an attempt to retrieve something from inside of it. § 87(2)(b) was told by one of the officers that he could not go back to the vehicle. However, he did not recall which officer stated this to § 87(2)(b) and did not hear Lieutenant Chen threaten to arrest § 87(2)(b) at any point during the incident (Board Review 17).

The video footage did not capture this portion of the complaint and none of the obtained police documents contained information relevant to this allegation.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C: Abuse of Authority: Lieutenant Nanhao Chen threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that as he was standing next to the front driver window of § 87(2)(b)'s vehicle, Lieutenant Chen instructed him to go to the sidewalk as he was "interfering with the investigation." At one point in the interaction Lieutenant Chen also stated to § 87(2)(b) to "remain on the sidewalk" or he could go "downtown too." § 87(2)(b) was unsure whether these were the specific words used by Lieutenant Chen, but stated that they were "similar in nature." § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g)

Allegation D: Abuse of Authority: Lieutenant Nanhao Chen interfered with § 87(2)(b)'s use of a recording device.

Allegation E: Abuse of Authority: Lieutenant Nanhao Chen threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that while he recorded the incident from the sidewalk, Lieutenant Chen told him, "Are you recording this? If you are, you better stop because I'll bring him and you into the system." Lieutenant Chen additionally told § 87(2)(b) that if he kept recording, Lieutenant Chen was going to make it "a long day" for him. Lieutenant Chen also informed § 87(2)(b) who was standing nearby, to calm § 87(2)(b) down or it would be "a bad day for him" and stated that § 87(2)(b) "won't have a nice career once he's in the system" (Board Review 12).

§ 87(2)(b) stated that as § 87(2)(b) recorded the incident with his cellphone, Lieutenant Chen returned to the sidewalk and instructed him to "stop recording." § 87(2)(b) stated that Lieutenant Chen was unpleasant while speaking to § 87(2)(b) but did not remember any more details about the conversation. He did not remember if Lieutenant Chen told § 87(2)(b) that there may be consequences if he did not stop recording or if he ever stated that he would put § 87(2)(b) "in the system" or a similar statement. § 87(2)(b) stated that § 87(2)(b) stopped recording but not immediately upon Lieutenant Chen's request (Board Review 13).

§ 87(2)(b) had no account of this portion of the incident as he did not observe § 87(2)(b) record with his cellphone and did not hear any conversation with Lieutenant Chen pertaining to the recording. § 87(2)(b) was later informed by § 87(2)(b) that an officer threatened to arrest him if he didn't stop recording (Board Review 11).

§ 87(2)(b) observed § 87(2)(b) record the incident with his cellphone as § 87(2)(b) was standing in the sidewalk and was not in close proximity to any of the officers. Lieutenant Chen, who was about five feet away from § 87(2)(b) and was conversing with another officer in the street, approached § 87(2)(b) and told him, "Put that phone down or else I'm gonna take it from you and take you downtown." § 87(2)(b) was unsure if this was the exact statement made by Lieutenant Chen but remembered that it had to do with § 87(2)(b) being arrested if he did not stop recording (Board Review 14).

§ 87(2)(b) who confirmed that she was not present for the entirety of the incident, did not observe § 87(2)(b) record the interaction with the officers with his cellphone. Similarly, she did not hear any officer at the location comment or issue instructions pertaining to the recording. § 87(2)(b) did not hear Lieutenant Chen tell § 87(2)(b) that he would be arrested if he did not stop recording or make any other threat of arrest (Board Review 15).

Lieutenant Chen initially stated that he did not know if § 87(2)(b) recorded the incident with his cellphone and did not remember having a conversation with § 87(2)(b) pertaining to the recording. Lieutenant Chen did not remember if he asked § 87(2)(b) if he was recording but denied telling § 87(2)(b) that if he did not stop recording, he could be "placed in the system." He also did not remember making any threats of arrest while speaking to § 87(2)(b). During his interview, Lieutenant Chen was shown the video footage recorded by § 87(2)(b) and confirmed that he asked § 87(2)(b) if he was recording. He was then asked if he ever told § 87(2)(b) "If that's recording, I'm going to place you in the system." Lieutenant Chen acknowledged hearing the word "system" in the recording but stated that any officer could have said that, as it was unclear whether the voice belonged to him or another officer. Lieutenant Chen denied hearing the alleged statement in the recording (Board Review 16).

PO Tobar did not observe § 87(2)(b) record the incident with his cellphone and did not hear Lieutenant Chen speak to § 87(2)(b) about the recording. He did not know whether § 87(2)(b) was instructed to stop recording by Lieutenant Chen and denied hearing Lieutenant Chen tell § 87(2)(b) “If you don’t stop recording, I’ll put you in the system too.” PO Tobar also denied hearing Lieutenant Chen make any other threat of arrest while speaking to § 87(2)(b). After reviewing the footage recorded by § 87(2)(b) during the incident, PO Tobar confirmed that the officer depicted in the video resembled Lieutenant Chen, and he heard that officer state, “If you don’t stop recording...” PO Tobar could not identify the later portion of the statement due to the audio quality (Board Review 17).

The cellphone recording provided by § 87(2)(b) which is 13 seconds long, depicts a group of uniformed officers standing in the street. As § 87(2)(b) repeatedly states “officer, officer,” Lieutenant Chen turns around and approaches § 87(2)(b) and § 87(2)(b) who are in the sidewalk, a car length away from the officers. At 00:05 seconds in the recording, Lieutenant Chen can be heard referencing § 87(2)(b) “recording” the incident; however, it is unclear what exactly he says. Immediately after, Lieutenant Chen can be heard saying “maybe I’ll put him in the system” in the direction of the camera. At 00:08 seconds, as the voices in the recording become louder and overlap, Lieutenant Chen can be heard stating, “in the system, alright.”

§ 87(2)(g)

§ 87(2)(g)

Allegation F: Offensive Language: An officer made remarks to § 87(2)(b) based upon race.

§ 87(2)(b) stated that as he was standing by the sidewalk with § 87(2)(b) he observed additional police vehicles arrive at the location and referred to a police van as a “paddy wagon.” An officer, who remains unidentified, replied, “It’s not a paddy wagon. It’s an official police vehicle. Watch your mouth boy” § 87(2)(b) who is black, interpreted the white officer’s words as offensive and believed them to be racially motivated (Board Review 12).

§ 87(2)(b) and § 87(2)(b) heard § 87(2)(b) use the term “paddy wagon” while speaking to an officer during the incident. § 87(2)(b) heard the officer reply, “It’s not a paddy wagon,” however, he did not hear him or any other officer state to § 87(2)(b) “watch your mouth boy” (Board Review 13 and 14).

§ 87(2)(b) and § 87(2)(b) did not hear any officer converse with § 87(2)(b) about a “paddy wagon.” Additionally, § 87(2)(b) did not hear any officers tell § 87(2)(b) “Watch your mouth boy” (Board Review 11 and 15).

Lieutenant Chen and PO Tobar had no recollection of this portion of the incident. While PO Tobar did not remember any conversation regarding a paddy wagon, Lieutenant Chen did not hear § 87(2)(b) or any officer use that term during the incident. Additionally, Lieutenant Chen and PO Tobar did not say “It’s not a paddy wagon; it’s an official police vehicle. Watch your mouth boy” while speaking to § 87(2)(b) and did not hear any officer do so (Board Review 16 and 17).

§ 87(2)(g)

Squad: 7

Investigator: _____ Filip Woroniecki 07/27/2017
Signature Print Date

Squad Leader: _____ Diana Townsend _____
Title/Signature Print Date

Reviewer: _____ _____
Title/Signature Print Date